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(Original Signature of Member)

108TH CONGRESS
2D SESSION

H. R. _____

To direct the Secretary of Homeland Security to issue regulations concerning
the shipping of extremely hazardous materials.

IN THE HOUSE OF REPRESENTATIVES

Mr. MARKEY (for himself, Ms. MCCARTHY of Missouri, Mr. GRIJALVA, Mr.
CASE, Mr. OWENS, Ms. LEE, Mr. TIERNEY, Ms. JACKSON-LEE of Texas,
and Mr. GONZALEZ) introduced the following bill; which was referred to
the Committee on _____

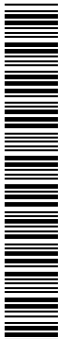
A BILL

To direct the Secretary of Homeland Security to issue regu-
lations concerning the shipping of extremely hazardous
materials.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Extremely Hazardous
5 Materials Transportation Security Act of 2004 ”.



1 **SEC. 2. RULEMAKING.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of this Act, the Secretary of Homeland
4 Security, in consultation with the heads of other appro-
5 priate Federal, State, and local government entities, secu-
6 rity experts, representatives of the hazardous materials
7 shipping industry and labor unions representing persons
8 who work in the hazardous materials shipping industry,
9 and other interested persons, shall issue, after notice and
10 opportunity for public comment, regulations concerning
11 the shipping of extremely hazardous materials.

12 (b) PURPOSES OF REGULATIONS.—The regulations
13 shall be consistent, to the extent the Secretary determines
14 appropriate, with and not duplicative of other Federal reg-
15 ulations and international agreements relating to the ship-
16 ping of extremely hazardous materials and shall require—

17 (1) physical security measures for such ship-
18 ments, such as the use of passive secondary contain-
19 ment of tanker valves, additional security force per-
20 sonnel, and surveillance technologies and barriers;

21 (2) concerned Federal, State, and local law en-
22 forcement authorities (including, if applicable, tran-
23 sit, railroad, or port authority police agencies) to be
24 informed before an extremely hazardous material is
25 transported within, through, or near an area of con-
26 cern;



1 (3) coordination with Federal, State, and local
2 law enforcement authorities to create response plans
3 for a terrorist attack on a shipment of extremely
4 hazardous materials;

5 (4) the use of currently available technologies
6 and systems to ensure effective and immediate com-
7 munication between transporters of extremely haz-
8 ardous materials, law enforcement authorities and
9 first responders;

10 (5) comprehensive and appropriate training in
11 the area of extremely hazardous materials transpor-
12 tation security for all individuals who transport,
13 load, unload, or are otherwise involved in the ship-
14 ping of extremely hazardous materials or who would
15 respond to an accident or incident involving a ship-
16 ment of extremely hazardous material or would have
17 to repair transportation equipment and facilities in
18 the event of such an accident or incident; and

19 (6) for the transportation of extremely haz-
20 ardous materials through or near an area of con-
21 cern, the Secretary to determine whether or not the
22 transportation could be made by one or more alter-
23 nate routes at lower security risk and, if the Sec-
24 retary determines the transportation could be made
25 by an alternate route, the use of such alternate



1 route, except when the origination or destination of
2 the shipment is located within the area of concern.

3 (c) JUDICIAL RELIEF.—A person (other than an indi-
4 vidual) who transports, loads, unloads, or is otherwise in-
5 volved in the shipping of hazardous materials and violates
6 or fails to comply with a regulation issued by the Secretary
7 under this section may be subject, in a civil action brought
8 in United States district court, for each shipment with re-
9 spect to which the violation occurs—

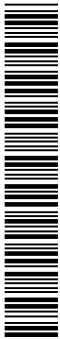
10 (1) to an order for injunctive relief; or

11 (2) to a civil penalty of not more than
12 \$100,000.

13 (d) ADMINISTRATIVE PENALTIES.—

14 (1) PENALTY ORDERS.—The Secretary may
15 issue an order imposing an administrative penalty of
16 not more than \$1,000,000 for failure by a person
17 (other than an individual) who transports, loads, un-
18 loads, or is otherwise involved in the shipping of haz-
19 ardous materials to comply with a regulation issued
20 by the Secretary under this section.

21 (2) NOTICE AND HEARING.—Before issuing an
22 order described in paragraph (1), the Secretary shall
23 provide to the person against whom the penalty is to
24 be assessed—



1 (A) written notice of the proposed order;
2 and

3 (B) the opportunity to request, not later
4 than 30 days after the date on which the per-
5 son receives the notice, a hearing on the pro-
6 posed order.

7 (3) PROCEDURES.—The Secretary may issue
8 regulations establishing procedures for administra-
9 tive hearings and appropriate review of penalties
10 issued under this subsection, including necessary
11 deadlines.

12 **SEC. 3. WHISTLEBLOWER PROTECTION.**

13 (a) IN GENERAL.—No person involved in the
14 shipping of extremely hazardous materials may be dis-
15 charged, demoted, suspended, threatened, harassed, or in
16 any other manner discriminated against because of any
17 lawful act done by the person—

18 (1) to provide information, cause information to
19 be provided, or otherwise assist in an investigation
20 regarding any conduct which the person reasonably
21 believes constitutes a violation of any law, rule or
22 regulation related to the security of shipments of ex-
23 tremely hazardous materials, or any other threat to
24 the security of shipments of extremely hazardous



1 materials, when the information or assistance is pro-
2 vided to or the investigation is conducted by—

3 (A) a Federal regulatory or law enforce-
4 ment agency;

5 (B) any Member of Congress or any com-
6 mittee of Congress; or

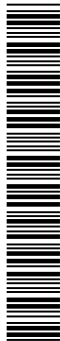
7 (C) a person with supervisory authority
8 over the person (or such other person who has
9 the authority to investigate, discover, or termi-
10 nate misconduct); or

11 (2) to file, cause to be filed, testify, participate
12 in, or otherwise assist in a proceeding or action filed
13 or about to be filed relating to a violation of any
14 law, rule or regulation related to the security of
15 shipments of extremely hazardous materials or any
16 other threat to the security of shipments of ex-
17 tremely hazardous materials.

18 (3) to refuse to violate or assist in the violation
19 of any law, rule, or regulation related to the security
20 of shipments of extremely hazardous materials.

21 (b) ENFORCEMENT ACTION.—

22 (1) IN GENERAL.—A person who alleges dis-
23 charge or other discrimination by any person in vio-
24 lation of subsection (a) may seek relief under sub-
25 section (c), by—



1 (A) filing a complaint with the Secretary of
2 Labor; or

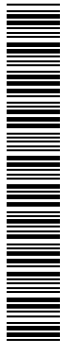
3 (B) if the Secretary has not issued a final
4 decision within 180 days of the filing of the
5 complaint and there is no showing that such
6 delay is due to the bad faith of the claimant,
7 bringing an action at law or equity for de novo
8 review in the appropriate district court of the
9 United States, which shall have jurisdiction
10 over such an action without regard to the
11 amount in controversy.

12 (2) PROCEDURE.—

13 (A) IN GENERAL.— An action under para-
14 graph (1)(A) shall be governed under the rules
15 and procedures set forth in section 42121(b) of
16 title 49, United States Code.

17 (B) EXCEPTION.—Notification made under
18 section 42121(b)(1) of title 49, United States
19 Code, shall be made to the person named in the
20 complaint and to the person's employer.

21 (C) BURDENS OF PROOF.—An action
22 brought under paragraph (1)(B) shall be gov-
23 erned by the legal burdens of proof set forth in
24 section 42121(b) of title 49, United States
25 Code.



1 (D) STATUTE OF LIMITATIONS.—An action
2 under paragraph (1) shall be commenced not
3 later than 90 days after the date on which the
4 violation occurs.

5 (c) REMEDIES.—

6 (1) IN GENERAL.—A person prevailing in any
7 action under subsection (b)(1) shall be entitled to all
8 relief necessary to make the person whole.

9 (2) COMPENSATORY DAMAGES.—Relief for any
10 action under paragraph (1) shall include—

11 (A) reinstatement with the same seniority
12 status that the person would have had, but for
13 the discrimination;

14 (B) the amount of any back pay, with in-
15 terest; and

16 (C) compensation for any special damages
17 sustained as a result of the discrimination, in-
18 cluding litigation costs, expert witness fees, and
19 reasonable attorney fees.

20 (d) RIGHTS RETAINED BY PERSON.—Nothing in this
21 section shall be deemed to diminish the rights, privileges,
22 or remedies of any person under any Federal or State law,
23 or under any collective bargaining agreement.

24 **SEC. 4. DEFINITIONS.**

25 In this Act, the following definitions apply:



1 (1) EXTREMELY HAZARDOUS MATERIAL.—The
2 term “extremely hazardous material” means—

3 (A) a material that is toxic by inhalation;

4 (B) a material that is extremely flam-
5 mable;

6 (C) a material that is highly explosive; and

7 (D) any other material designated by the
8 Secretary to be extremely hazardous.

9 (2) AREA OF CONCERN.—The term “area of
10 concern” means an area that the Secretary deter-
11 mines could pose a particular interest to terrorists.

